



# Town Council Agenda Report

**SUBJECT:** Resolution

**CONTACT PERSON/NUMBER:** Chris Wallace, 797-1050

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE TWO, CONCURRENT CONTRACTS TO PROVIDE MAINTENANCE SERVICES FOR THE VARIOUS COMPUTER EQUIPMENT AND ASSOCIATED SOFTWARE RECENTLY PURCHASED UNDER RESOLUTION R-99-376 VIA STATE OF FLORIDA CONTRACT 250-050-97-1

**REPORT IN BRIEF:**

These services will allow maximum use of the two new AS/400 mid-range computers and associated equipments and software located at Town Hall and at the new Public Safety Facility by providing 24/7 maintenance and repair coverage over a period of 5 years after the one year warranty period from the initial purchase is up. Such coverage is necessary to achieve the goals of the new system, which include providing the police department with 24/7 access to their systems and, in the event of a catastrophic failure of one or the other computer, enable town employees to transparently run payroll and other vital processes on the remaining computer. This is a purchase of services for equipments and software purchased under a State of Florida contract, however, the Purchasing Ordinance requires contracts over \$5,000 to be separately approved.

**PREVIOUS ACTIONS:**

Council authorized the purchase of this service by R-99-376.

**CONCURRENCES:**

None required.

**FISCAL IMPACT:**

Has request been budgeted? Yes

Expected cost not to exceed \$170,000 over 5 years.

Account Name: Information Systems Maintenance/Prepaid Maintenance

**RECOMMENDATION(S):**

Motion to approve the resolution.

**Attachment(s):**

Resolution

Proposal Breakdown

Contracts

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE TWO, CONCURRENT CONTRACTS TO PROVIDE MAINTENANCE SERVICES FOR THE VARIOUS COMPUTER EQUIPMENT AND ASSOCIATED SOFTWARE RECENTLY PURCHASED UNDER RESOLUTION R-99-376 VIA STATE OF FLORIDA CONTRACT 250-050-97-1

WHEREAS, the Town has recently deployed a new midrange computer system in the Town Hall and the recently constructed Public Safety headquarters; and

WHEREAS, the Police system requires a 24 hour a day/7 days a week (24/7) high availability system; and

WHEREAS, the Town desires to maintain this equipment and software to achieve their performance potentials on a continuing and regular basis; and

WHEREAS, the contract award for such maintenance has been already competitively bid and awarded by the State of Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby accepts the award made by the State of Florida to IBM and authorizes the Mayor to execute the contracts with IBM, attached hereto and identified as Attachment 4A & 4B, for providing around-the-clock maintenance of the Town's current mid-range computer system.

SECTION 2. The Town Council hereby authorizes the expenditure from the Information Systems Computer Maintenance Account.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000

\_\_\_\_\_  
MAYOR/COUNCIL MEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000

## TOWN OF DAVIE PROCUREMENT AUTHORIZATION

<u>Account Number</u>	<u>Budget &amp; Description</u>	<u>Approximate Cost</u>
05202595930441	Information Systems Computer Maint	\$170,000

**Method of Procurement** (check the one that applies)

Open Competitive Bidding  
X Piggyback on **Florida State Contract** Number 250-050-97-1  
Sole Source

**Checklist Specification & List Of Vendors Must Be Attached**

Signed \_\_\_\_\_  
Department Head

Have Funds Been Reserved \_\_\_\_\_

Date \_\_\_\_\_ Signed \_\_\_\_\_

Signed \_\_\_\_\_  
Town Administrator

**Bids Submitted**

<u>Vendor</u>	<u>Cost</u>
IBM	Not to Exceed \$170,000

\* **Florida State Contract** Number 250-050-97-1 on file in Purchasing Office.

Signed \_\_\_\_\_  
Purchasing Specialist

**Town Administrator's Recommendation**

<u>Vendor</u>	<u>Cost</u>
IBM	Not to Exceed \$170,000

Signed \_\_\_\_\_  
Town Administrator

## **PROPOSAL BREAKDOWN**

### **AS/400 5-YEAR MAINTENANCE PROPOSAL**

<b>Primary System (Town Hall)</b>	<b>\$ 104,942.77</b>
<b>Backup System (Public Safety)</b>	<b>\$ 63,734.29</b>
	<b>-----</b>
<b>Total</b>	<b>\$ 168,677.06</b>

# IBM. Statement of Work for Services Acquired from an IBM Business Partner

## ServiceSuite

### 1. Scope of Services

We will provide to you the Services described in this Statement of Work for the Machines we specify (called "Eligible Machines"). We will identify the Eligible Machines, and the Services that apply to them, in a Schedule to this Statement of Work. The Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

These Services are available for Machines used solely for business, professional, or trade purposes and not for personal, family, or household purposes. You agree that for on-site Services, your Specified Location is neither a home nor home office.

Machine maintenance Services will include correction of date related errors only if the Machines are IBM Machines whose Specifications state that they are "Year 2000 Ready." "Year 2000 Ready" means that the IBM Machine, when used in accordance with IBM associated documentation is capable of correctly processing, providing and/or receiving date data within and between the twentieth and twenty-first centuries, provided that all products (for example, hardware, software, and firmware) used with the IBM Machine properly exchange accurate date data with it.

All other included Services do not address the capability of your systems to handle date data within and between the twentieth and twenty-first centuries. You acknowledge that it is your responsibility

Each of us agrees that the complete agreement between us about this transaction consists of 1) this Statement of Work and its Schedules, 2) supplemental terms referenced herein, and 3) the IBM agreement for Services Acquired from an IBM Business Partner (or any equivalent agreement in effect between us) identified below.

Agreed to: (Customer Name)  
Town Of Davie

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer Company address:  
6591 Orange Drive  
Davie, FL 33314  
(954) 797-1049

Statement of Work number:  
Agreement number:  
IBM ServicesAssistant number: G21022Si

Telephone number:  
Billing address:  
Savoir Technology Group  
6550 North Loop 1604 East  
San Antonio, TX 78247

Customer Company number:  
IBM Company address:  
IBM Business Partner Support Operations  
Attn: Linda Handle  
4111 Northside Parkway  
Atlanta, GA 30327

After signing, please return a copy of this Statement of Work to the "IBM address" shown above.

to assess your current systems and take appropriate action to migrate to Year 2000 ready systems. Please refer to IBM Product Specifications or IBM's Internet venue at <http://www.ibm.com/year2000> to determine whether IBM Products are Year 2000 ready.

## 2. Contract Period

Start Date: 05/24/2000

End Date: 05/23/2005

Eligible Machines, Specified Locations, or new Services added to this Statement of Work following its Start Date will assume the remaining portion of the existing contract period.

Renewal Contract Period (years): 5

We will renew the Services that apply for each Specified Location on the Contract Period End Date for the number of years (called the "Renewal Contract Period") specified above. Thereafter, we will automatically renew for the same length periods unless you notify us and your IBM Business Partner in advance of your desire to change the length of the renewal. Either of us can select not to renew by providing written notification (at least one month prior to the end of the current contract period) to the other and to your IBM Business Partner of their intent not to renew.

## 3. Your Responsibilities

You agree:

1. to provide your IBM Business Partner with an inventory in which you identify all Eligible Machines to be covered at each Specified Location. All Eligible Machines of the same type at a Specified Location must be included in the coverage. You also agree to identify all Eligible Machines for which we are to provide warranty service;
2. to notify your IBM Business Partner whenever you wish to add Eligible Machine types to an existing Specified Location or set up new Specified Locations;
3. to ensure that any access codes we provide to you are used only by those who are authorized to do so;
4. to provide your IBM Business Partner with information we request which is related to our provision of these Services to you and notify your IBM Business Partner of any changes;
5. to use any electronic diagnostic and service delivery facilities we provide to you only in support of Eligible Machines identified in the Schedule to this Statement of Work;
6. that electronic access to our support centers and certain databases may require a separate network services agreement;\*;
7. to pay any communications charges associated with accessing these Services unless we specify otherwise;
8. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise; and
9. that your acceptance of any software Services does not alter your responsibilities for DSLO licenses.

## 4. Mutual Responsibilities

If at any time either of us requests a review of the inventory count, each of us will cooperate in updating the last formal inventory.

## 5. Services Program License

The following terms apply to each Program we provide with a Service that is not otherwise accompanied by a license agreement.

We grant you a nonexclusive license to use the Program on the Eligible Machine we designate to assist us in problem determination or other system support in conjunction with these Services.

If we do not supply a backup copy, you may make one copy of the Program for backup purposes provided you reproduce the copyright notice and any other legend of ownership on that copy. The backup copy is subject to the same terms as the original. You may not 1) modify the Program's

machine readable instructions or data or merge them into another Program, 2) reverse assemble, reverse compile, or otherwise translate the Program, 3) sublicense, assign, or transfer the license for the Program, or 4) distribute the Program to any third party. We provide the Program **WITHOUT WARRANTIES OF ANY KIND.**

Your license terminates when 1) the Service terminates, is withdrawn or expires and is not renewed, 2) the Program is no longer needed to perform the Service, or 3) the Eligible Machine which we designated for the Program is removed from productive use within your Enterprise.

We may terminate your license if you fail to comply with these terms.

Upon termination, you agree to destroy the Program and any backup copy you were given or made.

## **6. Automatic Inventory Increases**

We will automatically increase the inventory count at a Specified Location whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period. IBM Machines specifically excluded from coverage at contract period start will remain outside the scope of this Statement of Work unless you request we add them during the contract period. However, all Eligible IBM Machines added to your inventory during the contract period will be included in the inventory count and receive maintenance Services as set out in this Section; or
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered that Specified Location, is added to the inventory. If the Machine is under warranty when added, Maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

## **7. Charges and Payment**

Your IBM Business Partner sets the charges and terms governing charges. Your IBM Business Partner may impose an additional charge for some actions, e.g., termination, or for our provision of some additional services, e.g., Service upgrades, additional Systems Administrators, additional reports, or support for other Products. These actions or additional services are identified in this Statement of Work with an asterisk (\*). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge. You will make payment directly to your IBM Business Partner.

## **8. Termination**

You have committed to continue Services for the entire contract period. However, you may terminate Services for an Eligible Machine, on notice to us (copy to your IBM Business Partner), if you permanently remove it from productive use within your Enterprise. Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing us one month's written notice (copy to your IBM Business Partner), after the Services have been covered under this Statement of Work for at least one year.\*

## **9. Satisfaction Guarantee**

If, for any reason, you are not completely satisfied with a Service we provide to you under this Statement of Work, notify us in writing within one month of the time you first become dissatisfied.

We will try to resolve the problem to your satisfaction. If we are unable to do so, you will receive a credit equal to the prorated charge for the Service for the period of time you were dissatisfied.

## 10. ServiceSuite Advanced Service Package

### \*\* MAINTENANCE SERVICES

#### Maintenance of IBM Machines

We will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

## 11. Support Services

### IBMLink

The following terms apply whenever a Service under this Statement of Work includes IBMLink electronic access to our databases containing IBM Product support information.

We will:

1. provide instructions for accessing the databases; and
2. provide user IDs to your designated IBMLink Customer Service Administrator.

You agree to:

1. designate and authorize your users of the IBMLink databases. You may designate only yourself and your employees as users;
2. assign a user to be the IBMLink Customer Service Administrator (called "CSA"). The CSA is responsible for:
  - a. following the CSA procedures we provide,
  - b. registering your users for access to Product databases, and
  - c. acting as the primary interface between your users and us;
3. ensure your users use the information obtained from IBMLink only for the support of your information processing requirements. You may not use information obtained from IBMLink for any product development purpose or in any sales or marketing activity or to provide support to any third parties;
4. provide the equipment (such as workstations, modems, and communication features) necessary to use IBMLink;
5. obtain programs necessary to establish dial access to IBMLink;
6. be responsible for any unauthorized use of your user IDs; and
7. pay the charges of any third party telecommunications service provider you use to access IBMLink.

### Support Line

We will provide you remote assistance with the operation of supported programs within specific product groups running under selected operating systems for eligible hardware platforms. In addition, you may order certain optional features which are enhancements to this Service.

These terms also apply for each of these optional features unless we specify otherwise.

### Definitions

**Authorized Callers** means Named Callers you have identified to us and, with CS/390 and VM/VSE/390 coverage, all your other callers requesting OS/390 and VM/VSE/390 support.

**Customer Critical Problem** means a problem for which you have no known work around resulting in a critical disruption in your business operations.

**Full Shift** means 24 hours a day, seven days a week, including national holidays.



**Off Shift** means all hours outside of Prime Shift.

**Prime Shift** means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

**Supported Products** means those products contained within designated product groups that run under identified operating systems for eligible hardware platforms. Supported Products are identified in the Supported Products List located at IBM's Internet address <http://www.ibm.com/services/pss/www/sl/products>, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, operating system groups, and hardware platforms that are eligible for this Service. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

#### **Our Responsibilities**

We will provide you remote assistance (via telephone from our support center or via an electronic search and questioning capability) for the following requests related to Supported Products in your specified product groups and operating system groups:

1. basic, short duration installation, usage, and configuration questions;
2. code-related problem questions;\*;
3. questions regarding IBM Supported Product publications;
4. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems);\* and
5. for known defects, available corrective service information and program fixes which you are entitled to receive under the terms of your program license agreement.\*

\* Note: For IBM S/390 Supported Products, this defect assistance from our support center is included in your license charge and therefore not covered under the terms of this Statement of Work.

When you report a problem with covered non-IBM products on the Supported Products List, we will assist you to isolate the problem cause and provide you recovery information, if available, from the vendor. We will provide corrective service information and program fixes, if available, and we are authorized to provide to you, for known defects. If a new (unknown) defect is identified, we will report it to the appropriate vendor and notify you of our actions. At this point we will consider our support requirement fulfilled. Resolution of these problems is the responsibility of the vendor.

#### **Named Callers**

You may designate two users ("Named Callers") per selected operating system group for which you select Prime Shift coverage. You may designate six Named Callers per selected operating system group for which you select Full Shift coverage. Each Named Caller is eligible to submit Support Line Service requests for all products you have covered under this Service.

You must notify us of the identity of your Named Callers as well as one Primary Technical Contact (who may be one of your Named Callers) to whom we may direct general technical information pertaining to your Supported Products and who has the authority to change your designated Named Callers and communicate those changes to us. You may request, through your IBM Business Partner, an increase to your allowed number of Named Callers.\*

#### **Other OS/390 and VM/VSE/390 Users**

When you select this Service for the OS/390 and VM/VSE/390 operating system groups and associated product groups, you may authorize other users (in addition to Named Callers) who we do not require you to individually identify to us. All OS/390 and VM/VSE/390 users who are not Named Callers are eligible to submit Support Line Service requests for products in the OS/390 and VM/VSE/390 operating system groups and associated product groups only.

The terms that apply for your Software Subscription are contained in the IBM Agreement for Software Subscription (Z125-5959) and its Exhibit for AS/400 (Z125-5873). Copies of these documents are included with this Statement of Work. Please make sure you have them and notify us if either is missing.

## **IBM Schedule for Services Acquired from an IBM Business Partner – ServiceSuite**

This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which we will provide the identified Services as described in your end users Statement of Work. These terms are in addition to those of the referenced Statement of Work and IBM Agreement for Services acquired from an IBM Business Partner (or any equivalent agreement signed by both of us and identified below).

### **Customer Name and Billing Address:**

Town Of Davie  
Savoir Technology Group  
6550 North Loop 1604 East  
San Antonio, TX 78247

**Agreement No:**  
**Statement of Work No:**  
**IBM ServicesAssistant No:** G21022SI  
**Customer No:**  
**Revised Schedule (Yes/No):** No  
**Schedule Effective Date:** 05/24/2000

### **Business Partner Name and Address:**

Savoir Technology Group  
Attn: Melissa Rodriguez  
6550 North Loop 1604 East  
San Antonio, TX 78247

**ASPID No:** 8426127

**Charge Period:**  
**Start Date:** 05/24/2000  
**End Date:** 05/23/2005

The parties need not sign this Schedule, unless either of us requests it.

**Agreed to:**

Town Of Davie

**By** \_\_\_\_\_  
Authorized signature

**Name (type or print):**

**Date:**

**Agreed to:**

International Business Machines Corporation

**By** \_\_\_\_\_  
Authorized signature

**Name (type or print):**

**Date:**

# **IBM Schedule for Services Acquired from an IBM Business Partner – ServiceSuite**

-----Eligible Machine-----					Maintenance Service			
Manufacturer	Machine				Type of Repair			
	Type	Model	Serial	Qty	#	##	Charges Start**	Charges Stop**
<b>Customer No / Location:</b>			00000000					
IBM	6547	0AN	000000000	1	G	1	W	07/01/2002
IBM	6892	47U	000000000	1	B	1	W	07/01/2002
<b>Customer No / Location:</b>			01148257					
IBM	3570	C01	000058461	1	B	1	W	01/28/2003
IBM	7208	342	0000P6562	1	B	1	W	01/28/2001
IBM	7852	400	0042T4925	1	G	1	W	01/28/2001
IBM	7852	40Z	0042T1325	1	G	1	W	01/28/2001
IBM	9406	720	00004MCZM	1	B	1	W	01/28/2001

# **IBM Schedule for Services Acquired from an IBM Business Partner - ServiceSuite**

Eligible Machine Description					Customer Technical Contact Name (if applicable)			
Type	Mod	Proc Feature	Serial	Support Service	Service Option/ Product Group	Qty	Charges Start**	Charges Stop**
Customer No / Location:					AS400 ALERT			
					SL SELECTED SYS SW SUPT-PC			
					ALERT	1		
					FULL SHIFT			
					PC GROUP A			
					OS/2 & DOS	1		
					COM	1		
					FULL SHIFT			
					AS GROUP E			
					FOCAL MACHINE			
					OS/400	1		
					I10-MQSERIES	1		
9406	720	2062	4MCZM	SL SINGLE SYS SW SUPT-AS				

## **IBM Schedule for Services**

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### **Legends:**

#### **# Type of Repair Service**

- A) On-Site Repair Service, Monday through Friday (except holidays) 8am to 5pm
- B) On Site Repair 7 days a week, 24 hrs/day
- F) On-Site Exchange Service, Monday through Friday (except holidays) 8am to 5pm
- G) On-Site Exchange Service, 7 days a week, 24 hrs/day
- X) EasyServ (remotely delivered services)

#### **## Maintenance Services**

- 1) Maintenance of IBM Machines
- 2) Maintenance of non-IBM Machines
- 3) Warranty Services Upgrade
- 4) Warranty Service Support for SUN Microsystems Machines

\* Charges shown are for Charge Period.

-An (E) indicates a Machine that has been announced as withdrawn from generally Maintenance Service

-An (O) indicates One Time Charge

-An (W) indicates a Machine/Model/Feature under Warranty

\*\* Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates

\*\*\* These Programs are subject to the Service Program License Section of the referenced Statement of Work

## **IBM Schedule for Services for Remarketers - ServiceSuite**

This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which we will provide the identified Services as described in your end users Statement of Work. These terms are in addition to those of the Attachment for ServiceSuite for Remarketers.

### **Customer Name and Billing Address:**

Town Of Davie  
Savoir Technology Group  
6550 North Loop 1604 East  
San Antonio, TX 78247

**Agreement No:**  
**Statement of Work No:**  
**IBM ServicesAssistant No:** G21022SI  
**Customer No:**  
**Revised Schedule (Yes/No):** No  
**Schedule Effective Date:** 05/24/2000

### **Business Partner Name and Address:**

Savoir Technology Group  
Attn: Melissa Rodriguez  
6550 North Loop 1604 East  
San Antonio, TX 78247

**ASPID No:** 8426127

**Charges and Payment Plan:**  
\$104,942.77

Contract Period prepayment

**Start Date:** 05/24/2000  
**End Date:** 05/23/2005  
**\* Total Charges:** \$104,942.77

\* Charges provided do not include application of the Business Partner Remarketer or Distributor discounts as appropriate. These Charges are based on the current inventory and services identified in this Schedule.

The parties need not sign this Schedule, unless either of us requests it.

**Agreed to:**

Savoir Technology Group

**By** \_\_\_\_\_  
Authorized signature

**Name (type or print):**

**Date:**

**Agreed to:**

International Business Machines Corporation

**By** \_\_\_\_\_  
Authorized signature

**Name (type or print):**

**Date:**

## **Schedule for Services for Remarketers – ServiceSuite**

### **Enterprise Total for Charge Period by Customer Number**

Customer No	Location	Charges *
00000000		\$75,122.05
01148257		\$29,820.72
	Total :	<u>\$104,942.77</u>



# IBM Schedule for Services for Remarketers - ServiceSuite

-----Eligible Machine-----				Maintenance Service					
Manufacturer				Qty	Type of Repair #	##	Charges*	Charges Start**	Charges Stop**
Machine									
Type	Model	Serial							
Customer No / Location:			00000000						
IBM	6547	0AN	000000000	1	G	1	\$260.77	W	07/01/2001
IBM	6892	47U	000000000	1	B	1	\$656.87	W	07/01/2001
Total :							\$917.64		
Customer No / Location:			01148257						
IBM	3570	C01	000058461	1	B	1	\$3,475.02	W	01/28/2001
IBM	7208	342	0000P6562	1	B	1	\$3,115.18	W	01/28/2001
IBM	7852	400	0042T4925	1	G	1	\$192.96	W	01/28/2001
IBM	7852	40Z	0042T1325	1	G	1	\$192.96	W	01/28/2001
IBM	9406	720	00004MCZM	1	B	1	\$22,844.60	W	01/28/2001
Total :							\$29,820.72		

## IBM Schedule for Services for Remarketers – ServiceSuite

Eligible Machine Description					Customer Technical Contact Name (if applicable)				
Type	Mod	Proc Feature	Serial	Support Service	Service Option/ Product Group	Qty	Charges*	Charges Start**	Charges Stop**
Customer No / Location:					AS400 ALERT	ALERT	1	\$1,417.57	
					SL SELECTED SYS SW SUPT-PC	FULL SHIFT		\$22,826.98	
					PC GROUP A				
					OS/2 & DOS	1			
					COM	1			
9406	720	2062	4MCZM	SL SINGLE SYS SW SUPT-AS	FULL SHIFT		\$49,959.86		
					AS GROUP E				
					FOCAL MACHINE				
					OS/400	1			
					I10-MQSERIES	1			
					<b>Total :</b>		<b>\$74,204.41</b>		

## **IBM Schedule for Services**

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### **Legends:**

#### **# Type of Repair Service**

- A) On-Site Repair Service, Monday through Friday (except holidays) 8am to 5pm
- B) On Site Repair 7 days a week, 24 hrs/day
- F) On-Site Exchange Service, Monday through Friday (except holidays) 8am to 5pm
- G) On-Site Exchange Service, 7 days a week, 24 hrs/day
- X) EasyServ (remotely delivered services)

#### **## Maintenance Services**

- 1) Maintenance of IBM Machines
- 2) Maintenance of non-IBM Machines
- 3) Warranty Services Upgrade
- 4) Warranty Service Support for SUN Microsystems Machines

\* Charges shown are for Charge Period.

-An (E) indicates a Machine that has been announced as withdrawn from generally Maintenance Service

-An (O) indicates One Time Charge

-An (W) indicates a Machine/Model/Feature under Warranty

\*\* Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates

\*\*\* These Programs are subject to the Service Program License Section of the referenced Statement of Work

## Additional Information

CHIS T AND C : MASVCSUITE

<u>Type</u>	<u>Model</u>	<u>Serial</u>	<u>Features/RPQ</u>	<u>Effective From</u>	<u>Effective to</u>	<u>Quantity</u>
9406	720	00004MCZM		2001-01-28		1
			1502	2001-01-28		1
			2062	2001-01-28		1
			7128	2001-01-28		2
7852	40Z	0042T1325		2001-01-28		1
3570	C01	000058461		2003-01-28		1
7208	342	0000P6562		2001-01-28		1
7852	400	0042T4925		2001-01-28		1
6547	0AN	000000000		2002-07-01		1
6892	47U	000000000		2002-07-01		1

<u>Offering</u>	<u>Ver</u>	<u>MO</u>	<u>Comp</u>	<u>Effective</u>	<u>Effective</u>	<u>Service Condition</u>	<u>SC Value</u>	<u>Qty</u>
				<u>From</u>	<u>to</u>			
AS400-ALERT	001	ALERT	ALERT					1
SL SELECT-PC	001	OS/2 & DOS	OS/2 & DOS			COVERAGE	FULL SH FT	1
			COM			SERVICE GROUP	PC GROU P A	1
SL SINGLE-AS	002	OS/400	OS/400			COVERAGE	FULL SH FT	1
						SERVICE GROUP	AS GROU P E	1
						FOCAL POINT	FOCAL MACHINE	1
			110-MQSERIES					1

## **IBM** Change Authorization for Services

*Each of us agrees to modify the referenced Statement of Work and any applicable terms as follows:*

**Note:** Your IBM Business Partner may impose an additional charge for our provision of some additional services, e.g., Service upgrades, additional Systems Administrators, additional reports, or support for other Products, identified in this Statement of Work with an asterisk (\*). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge.

The following is added:

### **\* (SELECT THE SERVICE DESCRIPTIONS THAT APPLY)**

#### **Maintenance of IBM Machines**

We will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

#### **Maintenance of Non-IBM Machines**

We will provide Service for Machines, as described in our Agreement, for those Eligible non-IBM Machines specified in the Schedule. Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that we use repair parts manufactured by the original manufacturer when these are available.\*

Our support does not cover:

1. Machine installation, engineering change activity, or preventive maintenance;
2. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
3. service of microcode or firmware;

Each of us agrees that the complete agreement between us about these Services consists of 1) this Change Authorization, 2) the referenced Statement of Work and its prior Change Authorizations which have not been replaced by this one, and 3) the referenced Agreement.

Agreed to: (Town Of Davie)

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer number:

Reference Agreement number:

Customer address:

Reference Statement of Work number:

Change Authorization number:

IBM address:

Customer telephone number:

Customer billing address:

4. service of features, parts, or devices not supplied by either 1) the Machine's original manufacturer or 2) us during the performance of this Service;
5. service for accessories, supply items, and certain parts, such as batteries, frames, and covers;
6. service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
7. service of a Machine with removed or altered Machine or parts identification labels;
8. failures caused by a product for which we are not responsible; or
9. service of Machine alterations.

Upon written notice, we may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or lack of original manufacturer technical support.

Eligible non-IBM Machines must meet our safety and serviceability requirements. We reserve the right to inspect a Machine within one month from the start of Service. If the Machine is not in an acceptable condition for Service, we will notify you and terminate coverage.

### **Warranty Service Upgrade**

For certain Eligible Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine.\*

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of your standard inventory count and will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

**\* (IF THE ELECTRONIC SUPPORT FUNCTION FOR ANY OF THE INCLUDED SERVICES IS MADE AVAILABLE THROUGH IBMLINK, AND THE CUSTOMER HAS NOT ALREADY ACCEPTED THE IBMLINK TERMS UNDER A SEPARATE LIBRARY CARD ATTACHMENT, THE FOLLOWING IBMLINK TERMS MUST BE ADDED.)**

### **IBMLink**

The following terms apply whenever a Service under this Statement of Work includes IBMLink electronic access to our databases containing IBM Product support information.

We will:

1. provide instructions for accessing the databases; and
2. provide user IDs to your designated IBMLink Customer Service Administrator.

You agree to:

1. designate and authorize your users of the IBMLink databases. You may designate only yourself and your employees as users;
2. assign a user to be the IBMLink Customer Service Administrator (called "CSA"). The CSA is responsible for -
  - a. following the CSA procedures we provide;
  - b. registering your users for access to Product databases; and
  - c. acting as the primary interface between your users and us;
3. ensure your users use the information obtained from IBMLink only for the support of your information processing requirements. You may not use information obtained from IBMLink for any product development purpose or in any sales or marketing activity or to provide support to any third parties;
4. provide the equipment (such as workstations, modems, and communication features) necessary to use IBMLink;
5. obtain programs necessary to establish dial access to IBMLink;
6. be responsible for any unauthorized use of your user IDs; and
7. pay the charges of any third party telecommunications service provider you use to access IBMLink.

### **Support Line**

We will provide you remote assistance with the operation of supported programs within specific product groups running under selected operating systems for eligible hardware platforms. In addition, you may order certain optional features which are enhancements to this Service. These terms also apply for each of these optional features unless we specify otherwise.

## Definitions

**Authorized Callers** means Named Callers you have identified to us and, with OS/390 and VM/VSE/390 coverage, all your other callers requesting OS/390 and VM/VSE/390 support.

**Customer Critical Problem** means a problem for which you have no known work around resulting in a critical disruption in your business operations.

**Full Shift** means 24 hours a day, seven days a week, including national holidays.

**Off Shift** means all hours outside of Prime Shift.

**Prime Shift** means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

**Supported Products** means those products contained within designated product groups that run under identified operating systems for eligible hardware platforms. Supported Products are identified in the Supported Products List located at IBM's Internet address <http://www.ibm.com/services/pss/www/sl/products>, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, operating system groups, and hardware platforms that are eligible for this Service. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

## Our Responsibilities

We will provide you remote assistance (via telephone from our support center or via an electronic search and questioning capability) for the following requests related to Supported Products in your specified product groups and operating system groups:

1. basic, short duration installation, usage, and configuration questions;
2. code-related problem questions;#
3. questions regarding IBM Supported Product publications;
4. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
5. for known defects, available corrective service information and program fixes which you are entitled to receive under the terms of your program license agreements.#

# Note: For IBM S/390 Supported Products, this telephone assistance from our support center is included in your license charge.

When you report a problem with covered non-IBM products on the Supported Products List, we will assist you to isolate the problem cause and provide you recovery information, if available, from the vendor. We will provide corrective service information and program fixes, if available and we are authorized to provide to you, for known defects. If a new (unknown) defect is identified, we will report it to the appropriate vendor and notify you of our actions. At this point we will consider our support requirement fulfilled. Resolution of these problems is the responsibility of the vendor.

## Named Callers

You may designate two users ("Named Callers") per selected operating system group for which you select Prime Shift coverage. You may designate six Named Callers per selected operating system group for which you select Full Shift coverage. Each Named Caller is eligible to submit Support Line Service requests for all products you have covered under this Service. You must notify us of the identity of your Named Callers as well as one Primary Technical Contact (who may be one of your Named Callers) to whom we may direct general technical information pertaining to your Supported Products and who has the authority to change your designated Named Callers and communicate those changes to us. You may request, through your IBM Business Partner, an increase to your allowed number of Named Callers.\*

## Other 081390 and VM/VSE/390 Users

When you select this Service for the OS/390 and VM/VSE/390 operating system groups and associated product groups, you may authorize other users (in addition to Named Callers) who we do not require you to individually identify to us. All OS/390 and VM/VSE/390 users who are not Named Callers are eligible to submit Support Line Service requests for products in the OS/390 and VM/VSE/390 operating system groups and associated product groups only.

## Response Criteria

We will use commercially reasonable efforts to respond, by telephone, to Support Line Service calls from your Authorized Callers within two hours during Prime Shift. Our initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of

your request. During Off Shift we will use commercially reasonable efforts to respond to Support Line Service calls which your Authorized Callers specify to be Customer Critical Problems within two hours and all other Support Line Service calls within four hours.

### **Electronic Support**

Your Authorized Callers will also be able to electronically submit Support Line Service requests for Supported Products, provided you meet the prerequisites we specify for electronic access. We will use commercially reasonable efforts to respond to each electronic Service request from your Authorized Callers within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, we will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

### **Your Additional Responsibilities**

You agree to-

1. ensure you are properly licensed to all Supported Products for which you request assistance;
2. retrieve and review a current Supported Products List on a monthly basis to verify whether there have been any additions or deletions of products within your covered product groups;
3. ensure that any access codes we provide to you are used only by your current Authorized Callers-;
4. provide us with all relevant and available diagnostic information (including product or system information) pertaining to problems you request assistance with;
5. provide us with appropriate remote access to your system to assist you in isolating the problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission; and
6. provide us with written notice of changes to your machine inventory within one month after the change occurs. Such changes may cause a revision to your charges for this Service.

### **Termination**

You may terminate a Support Line Service or optional feature on one month's written notice to us and your IBM Business Partner after it has been covered under this Statement of Work for at least one year. However, you may not terminate an operating system group if you have elected to continue support for a product group for which it is a prerequisite. Also, you may not terminate Support Line if you have elected to continue feature support.

We may withdraw support for products on the Supported Products List at any time without written notice to you or your IBM Business Partner.

If we withdraw or either of us terminate a Support Line Service or optional feature as provided in this Statement of Work, and it is a Service or feature for which you have prepaid and we have not yet fully provided to you, you may request a prorated credit from your IBM Business Partner. This will apply if IBM withdraws support for an entire product group but not if we simply withdraw support for individual products.

### **Account Advocate**

We will provide you remote access (via telephone or electronic access) to an Account Advocate team which will assist you with coordination of support activities for Supported Products you have covered by Support Line. Account Advocate is an optional feature of Support Line and therefore the Support Line Service terms apply. You may select Account Advocate support for any or all of your Support Line product groups and operating system groups. Account Advocate is available during Prime Shift only.

### **Our Responsibilities**

The Account Advocate team will provide enhanced problem management support. In addition to Support Line assistance, for your selected products the Account Advocate team will:

1. coordinate your reported problems until they are resolved;
2. provide problem escalation assistance;
3. assist with problem circumvention when possible; and
4. track the status of reported problems and keep you informed of resolution progress.

Also, you may request that we coordinate submission of problems for additional non-IBM software products (two products, not included in the Supported Products List, per each of your Account Advocate covered operating systems) for which you have prearranged with the product vendors to enable us to remotely interface with them on your behalf. Resolution of non-IBM product problems remains the responsibility of the application vendor and you are responsible for any associated vendor charges.



In addition, we will assign you an Account Advocate Problem Manager who will work with you to develop your account profile and become familiar with your environment such that the Problem Manager will:

1. have a working knowledge of your systems and support structure;
2. develop and maintain an inventory of your Supported Products and their current levels based on your account profile and other information you provide to us;
3. monitor the status of your reported problems with Supported Products; and
4. conduct monthly reviews with you (by telephone during Prime Shift) summarizing your account activity.

#### **Response Criteria**

We will respond to your Account Advocate requests per the commitment under Support Line.

#### **Your Additional Responsibilities**

You agree to:

1. complete an account profile at the start of the contract period documenting information regarding your system environment; and
2. keep the Account Advocate Problem Manager informed of changes to your account profile (for example, additions or changes to your Supported Products).

#### **AS/400 Software Services**

**Alert** provides automatic weekly notification of the following for selected IBM Products: 1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and 2) any Program Temporary Fixes we discover to be defective (called "PE FTFs"). We provide notification via your choice of available delivery methods.

**PM/400e** provides you utilization and performance data for your designated AS/400 systems.

#### **Our Responsibilities**

We will provide you a set of performance analysis reports regarding each of your specified AS/400 systems for the time period you define (for example, 8 a.m. to 5 p.m.) for the calendar period you select (for example, monthly or quarterly). When you select electronic delivery, the report calendar period will be monthly.

#### **Your Responsibilities**

You agree to activate, per our instructions, the PM/400 data collection software that is part of your OS/400 operating system. You must also set up a modem and dial-up communication line that can be used to transmit the collected data to us.

You may select to have the reports we generate from the data delivered via hardcopy mail or electronically.

You are responsible for any communications charges you incur associated with this Service.

#### **Other Available Options**

The following options are also available\*:

1. an additional set of reports for the same AS/400 system but another time period (for example, 5 p.m. to 8 a.m.) for the same or different calendar period; and
2. a Consolidated Management Report which provides a monthly summary for all your AS/400 systems receiving this Service.

#### **Data Collection**

Systems utilization and performance information used to prepare your reports is gathered from your AS/400 system by the performance monitoring function of OS/400. For details on exactly what information is gathered by the performance monitoring function, please refer to the OS/400 Work Management manual that is shipped with your system.

#### **Data Usage**

The information gathered from your AS/400 systems will be used to generate your PM/400e Service reports. In addition, you agree that we may use and share the data so collected ("Your Data") within the IBM Enterprise and with third parties such as subcontractors and consultants under contract to us without limitation, including

for purposes of problem determination, assisting you with performance and capacity planning, maintaining your existing and developing new business relationships with IBM, notifying you of existing or projected resource constraints, and assisting us to enhance IBM Products. You also agree that Your Data may be transferred to such entities in any country whether or not a member of the European Union.

You may authorize IBM to share Your Data with other third parties, including one or more Solution Providers and Business Partners to make them aware of your performance and capacity demands and to enable them to provide you with a higher level of service.

**Software Subscription for AS/400** provides program updates announced during the contract period, as they become available and you request them, for all eligible Programs for which you are licensed.

The terms that apply for your Software Subscription are contained in the IBM Agreement for Software Subscription (Z125-5959) and its Exhibit for AS/400 (Z125-5873). Copies of these documents are included with this Statement of Work. Please make sure you have them and notify us if either is missing.

## **RS/6000 Software Services**

**RS/6000 System Alert** provides automatic weekly notification of the following for selected IBM Products:

1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARs") and 2) any Program Temporary Fixes we discover to be defective (called "PE PTFs"). We provide notification via your choice of available delivery methods.

**RS/6000 System Expert** provides you with information for planning and managing your system resources. Using data gathered from your system by a monitoring Program that we supply, we will prepare, encrypt, and deliver to your designated system daily reports that provide an analysis of system performance, capacity, configuration, and security. We will also supply a graphical viewer to enable you to view the encrypted reports.

In addition, we will make a feature available that enables your system to alert your designated support personnel whenever monitored system parameter values you select are exceeded.

You agree to:

1. provide the Internet or dial-up network connection to be used for transfer of data for this Service; and
2. install and configure, with remote assistance from us, the monitoring and graphical viewer Programs we supply.

### **NO LICENSE TO THE MONITORING PROGRAM IS GRANTED TO YOU.**

You may not:

1. use or copy the monitoring Program;
2. modify the monitoring Program's machine readable instructions or data or merge them into another Program;
3. reverse assemble, reverse compile or otherwise translate the monitoring Program; or
4. distribute, transfer or assign the monitoring Program to any third party.

We grant you a license for the graphical viewer Program under the terms of the Services Program License section of this Statement of Work. We provide the monitoring and graphical viewer Programs **WITHOUT WARRANTIES OF ANY KIND.**

**RS/6000 Technical Library** is a subscription Service comprised of two optional elements, Information Library and Software Service Library. You may subscribe to one or both of these elements which are delivered on CD-ROMS. The CD-ROMS are provided to you subject to the terms of the license agreement that accompanies them.

Information Library is a collection of comprehensive technical Materials for the RS/6000 and current release of AIX. When you subscribe to this element, each calendar quarter you will receive a CD-ROM, formatted in Hypertext Markup Language (HTML), containing up-to-date technical documentation and corrective service information for the RS/6000 and current release of AIX. Also included are answers to frequently asked installation and usage questions.

Software Service Library is a collection of Program Temporary Fixes (PTFs) for the current release of AIX. When you subscribe to this element, each calendar month you will receive a package of CD-ROMs containing all the new PTFs for AIX made available during the previous month.

#### **Our Responsibilities**

We will provide you with the following:

1. for Information Library, quarterly deliveries of the CD-ROM containing the most current F S/6000 and AIX information; and
2. for Software Service Library, monthly deliveries of the CD-ROM package containing the most current PTFs for the current release of AIX.

#### **Your Responsibilities**

You agree:

1. that by accessing or using the information contained on the CD-ROMs you acknowledge acceptance of the terms of the license agreement that accompanies them; and
2. to ensure you are properly licensed to the AIX program for which you receive PTFs.

#### **Termination**

During a subscription period, you may terminate your subscription but we do not give refunds or credits for mid-year terminations.

### **System/390 Software Services**

**Alert** provides electronic notification of and information about potential problems with selected IBM Products. We provide you:

1. automatic daily notification of the most critical and potentially harmful eligible Program problems;
2. information regarding the installation of new releases of Products or installation of temporary fixes for eligible Programs (called "PTFs");
3. access to Product cross-reference information;
4. the ability to order PTFs and request their electronic or physical delivery; and
5. the ability to order preventive service packages.

# Agreement for Services Acquired from an IBM Business Partner

Thank you for your business. We strive to provide you with high quality Services. If, at any time, You have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

IBM ("we") has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Services. Some IBM Business Partners also fulfill these functions through other remarketers who are not IBM Business Partners. However, for purposes of brevity in this Agreement, when we use the term IBM Business Partner we mean an IBM Business Partners and their remarketers. When the Customer ("you") orders our Services under this Agreement from an IBM Business Partner, we are responsible for providing the Services to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements. IBM Business Partners establish the price and terms at which they market IBM Services. In the event that your IBM Business Partner is no longer able to offer our Services, for any reason, we will so notify you in writing. You may continue to receive our Services by instructing us to transfer administration of your Service to either (1) another IBM Business Partner of your choice (who may require you to first execute one of their agreement ) who is approved to offer you our Services, or (2) us and signing a separate IBM agreement for services.

This IBM Agreement for Services Acquired from an IBM Business Partner (called the "Agreement") governs the Services you acquire from an IBM Business Partner and we perform.

## Part I – General

### 1.1 Definitions

**Enterprise** in any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. An Enterprise also includes other entities which are mutually agreed-to in writing.

**Machine** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) for which we may provide

maintenance Services.

**Materials** are literary works or other works of a thorship (such as programs, program listings, programming tools, documentation, reports, drawings, and similar works) that we may deliver to you as a part of a Service. The term "Materials" does not include licensed program products available under their own license agreements.

**Service** is performance of a task. Provision of advice and counsel, assistance, or access to a resource (such as access to an information data base) we make available to you.

PAGES 2 THROUGH 4 ARE ALSO PART OF THIS AGREEMENT. This Agreement and its applicable Attachments and Transaction Documents are the complete agreement between us regarding these Services and replace any prior oral or written communications regarding these Services. No machines or licensed program products are acquired under this Agreement. Such items are available only under the terms of 1) the IBM Customer Agreement (or any equivalent agreement between us) or 2) the applicable third-party agreement. By signing below for our respective Enterprises, each of us agrees to the terms of this Agreement. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Services you order under this Agreement are subject to it.

Agreed to: (Town of Davie)

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_

Authorized signature

By \_\_\_\_\_

Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number:

Agreement number:

Enterprise address:

IBM address:

After signing, please return a copy of this Agreement to the "IBM address" shown above.

## 1.2 Agreement Structure

### Attachments

Some Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments," which are also part of this Agreement. Attachments will be signed by both of us if requested by either of us. Your IBM Business Partner makes the Attachments available to you for signature.

### Transaction Documents

For each business transaction, your IBM Business Partner will provide you with the appropriate "Transaction Documents" that confirm the specific details of the transaction. Transaction Documents will be signed by both of us if requested by either of us. The following are examples of Transaction Documents, with examples of the information they may contain:

1. statements of work (scope of Services, responsibilities, deliverables, completion criteria and estimated schedule or contract period); and
2. supplements and order forms (Service type ordered and contract period).

### Conflicting Terms

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

### Our Acceptance of Your Request for Service

A Service becomes subject to this Agreement when we accept your request for Service from your IBM Business Partner by:

1. providing you a transaction document, or
2. providing the Service.

### Your Acceptance of Additional Terms

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document
2. using the Service or allowing others to do so; or
3. making any payment to your IBM Business Partner for the Service.

## 1.3 Charges and Payment

Your IBM Business Partner sets the changes and terms governing charges. You will make payment directly to your IBM Business Partner. However, we may charge you directly for expenses incurred to perform your Service request, e.g., actual travel and living expenses, out-of-pocket expense. We will not incur these expenses without your prior approval.

## 1.4 Changes to the Agreement Terms

In order to maintain flexibility in our Services, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new requests for Service and on-going transactions.

Part 3 of this Agreement contains additional provision for changes to the terms of individual Service transactions.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.

## 1.5 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us (including fundamental breach, negligence, misrepresentation or other contract or tort claim), we are liable for no more than

1. damages for bodily injury (including death) and damages to real property and tangible personal property; and
2. the amount of any other actual direct damages, up to the greater of U.S. \$100,000 (or equivalent in local currency), or the charges (if recurring, 12 months' charges apply) you paid to your IBM Business Partner for the Service that is the subject of the claim.

This limit also applies to any of our subcontractors. It is the maximum for which we and our subcontractors are collectively responsible.

### Items for Which We are Not Liable

Under no Circumstances are we or our subcontractors liable for any of the following:

1. third-party claims against you for damages (other than those under the first item listed above);
2. loss of, or damage to, your records or data; or
3. special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if we are informed of their possibility.

## 1.6 Mutual Responsibilities

Both of us agree that under this Agreement:

1. neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent;
2. all information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
3. each is free to enter into similar agreements with others;
4. each grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;
5. each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. An identification code (called a "user ID") contained in an Electronic document is sufficient to verify the sender's identity and the documents authenticity;
6. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;

7. neither of us will bring a legal action more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation; and
8. neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.

#### 1.7 Your Other Responsibilities

You agree:

1. not to assign, or otherwise transfer, this Agreement or your rights under this agreement, delegate your obligations, or resell any Service, without our prior written consent. Any attempt to do so is void;
2. that you are responsible for the results obtained from use of the Services; and
3. to provide us with sufficient, free and safe access to your facilities for us to fulfill our obligations.

#### 1.8 Agreement Termination

You may terminate this Agreement on written notice to your IBM Business Partner and to us following the expiration or termination of your obligations.

Either of us may terminate this Agreement on written notice to the other and to your IBM Business Partner, if the other does not comply with any of its terms.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

#### 1.9 Geographic Scope

All your rights and all our obligations are valid only in the United States and Puerto Rico, except that all licenses to Materials are valid as specifically granted.

The laws of the State of New York govern this Agreement.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

### Part 2 - Warranty Terms

#### 2.1 Warranty for IBM Services

For each IBM Service, we warrant that we perform it:

1. using reasonable care and skill;
2. and according to its current description (including any completion criteria) contained in this Agreement, an Attachment or a Transaction Document.

#### 2.2 Extent of Warranty

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 2.3 Items Not Covered by Warranty

We do not warrant uninterrupted or error-free operation of any

deliverable service.

Unless we specify otherwise, we provide Materials and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**.

### Part 3 – Services

#### 3.1 IBM Services

Services may be either standard offerings or customized to your specific requirements. Each Service transaction may include one or more Services that:

1. expire at task completion or an agreed upon date;
2. automatically renew as another transaction with a specified contract period. Renewals will continue until either of us terminates the Service; or
3. do not expire and are available for your use until either of us terminate the Service.

#### 3.2 Personal

Each of us will be responsible for the supervision, direction, and control of our respective personnel.

We reserve the right to determine the assignment of our personnel.

We may subcontract a Service, or any part of it, to subcontractors selected by us.

#### 3.3 Materials Ownership and License

We will specify Materials to be delivered to you. We or third parties have all right, title, and interest (including ownership of copyright) in Materials created during the Service performance period or otherwise (such as those that pre-exist the Service). We will deliver one copy of the specified Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of these Materials.

You agree to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted in this Section.

Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either of us, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

#### 3.4 Changes to Service Terms

We may change the terms of Service that are renewable or non-expiring by giving you three months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date we specify in the notice to all existing transactions. If we make a change to the terms of a renewable Service that 1) affects your current contract period and 2) you consider unfavorable, at the request of your IBM Business Partner, we will defer it until the end of that contract period.

When both of us agree to change any Services statement of work other than as described above, we will prepare a written description of the agreed change (called a "Change Authorization"), which both of us must sign. The terms of a Change Authorization prevail over those of the statement of work and any of its previous Change Authorizations.

### 3.5 Renewal

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least one month prior to the end of the current contract period) to the other and to your IBM Business Partner of their intent not to renew.

### 3.6 Termination and Withdrawal

Either of us may terminate a Service if the other does not meet its obligations concerning the Service.

You may terminate a Service transaction on one month's written notice to us and to your IBM Business Partner.\*

We may withdraw a renewable or non-expiring Service or support for an eligible product on three months' written notice to you. If we have not yet fully provided it to you, your IBM Business Partner will give you a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled, and apply to both of our respective successors and assignees.

### 3.7 Service for Machines

We provide certain types of repair and exchange Service either at your location or at a service center to keep Machines in, or restore them to, conformance with their official published specifications. We may repair the failing Machine or exchange it at our discretion.

When the type of Service requires that you deliver the failing Machine to us, you agree to ship it suitably packaged (prepaid unless we specify otherwise) to a location we designate. After we have, repaired or exchanged the Machine, we will return it to you at our expense unless we specify otherwise. We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit. In those cases where we are responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner and have us service a Machine that you do not own; and
2. where applicable, before we provide service:
  - a. follow the problem determination, problem analysis, and service request procedures that we provide,
  - b. secure all programs, data, and funds contained in a Machine, and

- c. inform your IBM Business Partner of changes in a Machine's location.

When Service Involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or Service status of the replaced item. Before we exchange a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Any feature, conversion, or upgrade we service must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment or improper maintenance by you;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which we are not responsible; or
5. service of Machine alterations.

We manage and install engineering changes that apply to IBM and may also perform preventive maintenance.

We provide maintenance Services for selected non-IBM Machines.

When you request maintenance Service under this Agreement, your IBM Business Partner will inform you of the date on which maintenance Services will begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may have us restore it.\* Alternatively, you may withdraw your request for maintenance Services.\*

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\* Check with your IBM Business Partner to determine if you will incur an additional charge for this.

# IBM® Statement of Work for Services

## ServiceSuite

### 1. Scope of Services

We will provide to you the Services described in this Statement of Work for the Machines we specify (called "Eligible Machines"). We will identify the Eligible Machines, the Services that apply to them, and the charges for these in a Schedule to this Statement of Work. The Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

These Services are available for Machines used solely for business, professional, or trade purposes and not for personal, family, or household purposes. You agree that for on-site Services, your Specified Location is neither a home nor home office.

Machine maintenance Services will include correction of date related errors only if the Machines are IBM Machines whose Specifications state that they are "Year 2000 Ready." "Year 2000 Ready" means that the IBM Machine, when used in accordance with IBM associated documentation is capable of correctly processing, providing and/or receiving date data within and between the twentieth and twenty-first centuries, provided that all products (for example, hardware, software, and firmware) used with the IBM Machine properly exchange accurate date data with it. All other included Services do not address the capability of your systems to handle date data within and between the twentieth and twenty-first centuries. You acknowledge that it is your responsibility to assess your current systems and take appropriate action to migrate to Year 2000 ready systems. Please refer to IBM Product Specifications or IBM's Internet venue at <http://www.ibm.com/year2000> to determine whether IBM Products are Year 2000 ready.

Each of us agrees that the complete agreement between us about this transaction consists of 1) this Statement of Work and its Schedules, 2) supplemental terms referenced herein, and 3) the IBM Customer Agreement (or any equivalent agreement in effect between us) identified below.

Agreed to: (Customer Company)  
Town of Davie

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer Company address:

6591 Orange Drive

Davie, FL 33314

Attn: Frank Apicella

954-797-1049

Telephone number:

Billing address:

Town of Davie

6591 Orange Drive

Davie, FL 33314

Statement of Work number:

Agreement number:

IBM ServicesAssistant number: G21023GQ

Customer Company number:

IBM address:

IBM Business Partner Support Operations

Attn: Linda Handle

4111 Northside Parkway

Atlanta, GA 30327

After signing, please return a copy of this Statement of Work to the "IBM Company address" shown above.



## 2. Contract Period

Start Date : 05/24/2000

End Date : 05/23/2005

Eligible Machines, Specified Locations, or new Services added to this Statement of Work following its Start Date will assume the remaining portion of the existing contract period.

Renewal Contract Period (years): 5

We will renew the Services that apply for each Specified Location on the Contract Period End Date for the number of years (called the "Renewal Contract Period") specified above. Thereafter, we will automatically renew for same length periods unless you notify us in advance of your desire to change the length of the renewal. Charges will be recalculated based on the length of the Renewal Contract Period and each subsequent renewal period. Either of us can select not to renew by providing written notification (at least one month prior to the end of the current contract period) to the other of their decision not to renew.

## 3. Your Responsibilities

You agree:

1. to provide us with an inventory in which you identify all Eligible Machines to be covered at each Specified Location. All Eligible Machines of the same type at a Specified Location must be included in the coverage. You also agree to identify all Eligible Machines for which we are to provide warranty service;
2. to notify us whenever you wish to add Eligible Machine types to an existing Specified Location or set up new Specified Locations;
3. to ensure that any access codes we provide to you are used only by those who are authorized to do so;
4. to provide us with information we request which is related to our provision of these Services to you and notify us of any changes;
5. to use any electronic diagnostic and service delivery facilities we provide to you only in support of Eligible Machines identified in the Schedule to this Statement of Work;
6. that electronic access to our support centers and certain databases may require a separate network services agreement for an additional charge;
7. to pay any communications charges associated with accessing these Services unless we specify otherwise;
8. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise; and
9. that your acceptance of any software Services does not alter your responsibilities for DSLO licenses.

## 4. Mutual Responsibilities

If at any time either of us requests a review of the inventory count, each of us will cooperate in updating the last formal inventory.

## 5. Services Program License

The following terms apply to each Program we provide with a Service that is not otherwise accompanied by a license agreement.

We grant you a nonexclusive license to use the Program on the Eligible Machine we designate to assist us in problem determination or other system support in conjunction with these Services.

If we do not supply a backup copy, you may make one copy of the Program for backup purposes provided you reproduce the copyright notice and any other legend of ownership on that copy. The backup copy is subject to the same terms as the original. You may not 1) modify the Program's machine readable instructions or data or merge them into another Program, 2) reverse assemble,

reverse compile, or otherwise translate the Program, 3) sublicense, assign, or transfer the license for the Program, or 4) distribute the Program to any third party. We provide the Program **WITHOUT WARRANTIES OF ANY KIND.**

Your license terminates when 1) the Service terminates, is withdrawn or expires and is not renewed, 2) the Program is no longer needed to perform the Service, or 3) the Eligible Machine which we designated for the Program is removed from productive use within your Enterprise.

We may terminate your license if you fail to comply with these terms.

Upon termination, you agree to destroy the Program and any backup copy you were given or made.

## **6. Automatic Inventory Increases**

We will automatically increase the inventory count at a Specified Location whenever:

1. an Eligible Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period. IBM Machines specifically excluded from coverage at contract period start will remain outside the scope of this Statement of Work unless you request we add them during the contract period. However, all Eligible IBM Machines added to your inventory during the contract period will be included in the inventory count and receive maintenance Services as set out in this Section; or
2. an Eligible Non-IBM Machine, of the same type as other Non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at the date of actual installation and will be covered at the same Warranty Service Upgrade support level.

## **7. Charges and Payment**

Your charges are calculated taking into account your Machine volumes, Service selections, and payment options.

Since you have selected to prepay for the entire contract period, you will not be subject to increases in charges (during that period) for included Eligible Machine configurations and Services. All newly added Eligible Machines and Services, as well as changes to existing Eligible Machine configurations and Services, will assume the charge rate that applied for these at contract period start. Eligible Machines and Services that become generally available during the contract period will be added at the charge rate that applied on their initial availability date. If you elect to have these charge terms apply for your Renewal Contract Period charges (as recalculated at the start of each renewal period), you must provide us written notification (at least one month prior to start of the renewal period) and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle and the following will apply throughout the renewal period:

1. we may revise charges in accordance with the terms of our Agreement, however any rate increases will not take effect until the next yearly anniversary of the start of the contract period;
2. all newly added Eligible Machines and Services, as well as changes to existing Eligible Machine configurations and Services, will assume the charge rate that applied for these at the previous yearly anniversary of the start of the contract period; and
3. Eligible Machines and Services that become generally available during the renewal period will be added at the charge rate that applied on their initial availability date.

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting; or
2. a Specified Location, Eligible Machine type, or Service is added, deleted, or changed.

For all Service charges based on usage, upon our request you will provide us with the actual meter reading recording the actual usage.

## 8. Termination

You have committed to continue Services for the entire contract period. However, you may terminate Services for an Eligible Machine, on notice to us, if you permanently remove it from productive use within your Enterprise. Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing us one month's written notice, after the Services have been covered under this Statement of Work for at least one year, and paying an adjustment fee equal to 5 months' charges.

After allowing for applicable adjustments, you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with the provisions of this Statement of Work.

## 9. Satisfaction Guarantee

If, for any reason, you are not completely satisfied with a Service we provide to you under this Statement of Work, notify us in writing within one month of the time you first become dissatisfied. We will try to resolve the problem to your satisfaction. If we are unable to do so, you will receive a credit equal to the prorated charge for the Service for the period of time you were dissatisfied.

## 10. ServiceSuite Advanced Service Package

### \*\* MAINTENANCE SERVICES

#### Maintenance of IBM Machines

We will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

## 11. Support Services

### Support Line

We will provide you remote assistance with the operation of supported programs within specific product groups running under selected operating systems for eligible hardware platforms. In addition, you may order certain optional features which are enhancements to this Service.

These terms also apply for each of these optional features unless we specify otherwise.

### Definitions

**Authorized Callers** means Named Callers you have identified to us and, with OS/390 and VM/VSE/390 coverage, all your other callers requesting OS/390 and VM/VSE/390 support.

**Customer Critical Problem** means a problem for which you have no known work around resulting in a critical disruption in your business operations.

**Full Shift** means 24 hours a day, seven days a week, including national holidays.

**Off Shift** means all hours outside of Prime Shift.

**Prime Shift** means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

**Supported Products** means those products contained within designated product groups that run under identified operating systems for eligible hardware platforms. Supported Products are identified in the Supported Products List located at IBM's Internet address <http://www.ibm.com/services/pss/ww/sl/products>, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, operating system groups, and hardware platforms that are eligible for this Service. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

#### **Our Responsibilities**

We will provide you remote assistance (via telephone from our support center or via an electronic search and questioning capability) for the following requests related to Supported Products in your specified product groups and operating system groups:

1. basic, short duration installation, usage, and configuration questions;
2. code-related problem questions;\*
3. questions regarding IBM Supported Product publications;
4. diagnostic information review to assist in isolation of a problem cause (for example assistance interpreting traces and dumps for installation and code related problems); \* and
5. for known defects, available corrective service information and program fixes which you are entitled to receive under the Program Services terms of our Agreement.\*

\* Note: For IBM S/390 Supported Products, this defect assistance from our support center is included in your license charge and therefore not covered under the terms of this Statement of Work.

When you report a problem with covered non-IBM products on the Supported Products List, we will assist you to isolate the problem cause and provide you recovery information, if available, from the vendor. We will provide corrective service information and program fixes, if available and we are authorized to provide to you, for known defects. If a new (unknown) defect is identified, we will report it to the appropriate vendor and notify you of our actions. At this point we will consider our support requirement fulfilled. Resolution of these problems is the responsibility of the vendor.

#### **Named Callers**

You may designate two users ("Named Callers") per selected operating system group for which you select Prime Shift coverage. You may designate six Named Callers per selected operating system group for which you select Full Shift coverage. Each Named Caller is eligible to submit Support Line Service requests for all products you have covered under this Service.

You must notify us of the identity of your Named Callers as well as one Primary Technical Contact (who may be one of your Named Callers) to whom we may direct general technical information pertaining to your Supported Products and who has the authority to change your designated Named Callers and communicate those changes to us. For an additional charge, you may increase your number of Named Callers.

#### **Other OS/390 and VM/VSE/390 Users**

When you select this Service for the OS/390 and VM/VSE/390 operating system groups and associated product groups, you may authorize other users (in addition to Named Callers) who we do not require you to individually identify to us. All OS/390 and VM/VSE/390 users who are not Named Callers are eligible to submit Support Line Service requests for products in the OS/390 and VM/VSE/390 operating system groups and associated product groups only.

#### **Response Criteria**

We will use commercially reasonable efforts to respond, by telephone, to Support Line Service calls from your Authorized Callers within two hours during Prime Shift. Our initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request. During Off Shift we will use commercially reasonable efforts to respond to Support Line Service calls which your Authorized Callers specify to

be Customer Critical Problems within two hours and all other Support Line Service calls within four hours.

#### **Electronic Support**

Your Authorized Callers will also be able to electronically submit Support Line Service requests for Supported Products, provided you meet the prerequisites we specify for electronic access. We will use commercially reasonable efforts to respond to each electronic Service request from your Authorized Callers within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, we will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

#### **Hourly Support for Out-of-Scope Service Requests**

If you select Full Shift coverage, all Support Line Service calls from your Authorized Callers during Prime Shift and Off Shift are included in your standard billing. If you select only Prime Shift coverage, all Support Line Service calls from any of your personnel during Off Shift will result in an additional charge to you on an hourly basis. In addition, Support Line Service requests from your personnel seeking assistance for Supported Products which are outside your covered product groups will also result in an additional charge to you on an hourly basis (Note: For IBM S/390 Supported Products, this out-of-scope support is only available via telephone).

A minimum charge of 30 minutes will be applied to each request for Support Line Service that is beyond the scope of your annual coverage. Additional time required to prepare and answer the request will be charged in 6 minute segments. We will charge you for the time we spend 1) exchanging information with your personnel, 2) analyzing information they provide to us, and 3) preparing recommendations to resolve a problem. The hourly rate will be that which is current when used. You will be separately invoiced for these charges.

This hourly support will be available to you as long as you continue annual Support Line Service for at least one Supported Product group. You may choose to decline this out-of-scope Service coverage by notifying us in writing within 15 days from the start of your contract period.

If you decline or terminate this coverage, whenever your callers request support which is beyond the scope of your covered Support Line Service, we will advise them that we cannot provide such support until you sign the necessary IBM contractual documents accepting the terms of such support.

#### **Your Additional Responsibilities**

You agree to:

1. ensure you are properly licensed to all Programs for which you request assistance;
2. retrieve and review a current Supported Products List on a monthly basis to verify whether there have been any additions or deletions of products within your covered product groups;
3. ensure that any access codes we provide to you are used only by your current Authorized Callers;
4. provide us with all relevant and available diagnostic information (including product or system information) pertaining to problems you request assistance with;
5. provide us with appropriate remote access to your system to assist you in isolating the problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission; and
6. provide us with written notice of changes to your machine inventory within one month after the change occurs. Such changes may cause a revision to your charges for this Service.

#### **Termination**

You may terminate a Support Line Service or optional feature on one month's written notice to us after it has been covered under this Statement of Work for at least one year. However, you may not terminate an operating system group if you have elected to continue support for a product group for which it is a prerequisite. Also, you may not terminate Support Line if you have elected to continue feature support.

We may withdraw support for products on the Supported Products List at any time without written notice to you.

If we withdraw or either of us terminate a Support Line Service or optional feature as provided in this Statement of Work, and it is a Service or feature for which you have prepaid and we have not yet fully provided to you, you may request a prorated credit. This will apply if IBM withdraws support for an entire product group but not if we simply withdraw support for individual products.

**AS/400 Software Services**

**Alert** provides automatic weekly notification of the following for selected IBM Products: 1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and 2) any Program Temporary Fixes we discover to be defective (called "PE PTFs"). We provide notification via your choice of available delivery methods.

The terms that apply for your Software Subscription are contained in the IBM Agreement for Software Subscription (Z125-5959) and its Exhibit for AS/400 (Z125-5873). Copies of these documents are included with this Statement of Work. Please make sure you have them and notify us if either is missing.

## IBM Schedule for Services

This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which we will provide the identified Services as described in the referenced Statement of Work. These terms are in addition to those of the referenced Statement of Work and IBM International Customer Agreement (or any equivalent agreement signed by both of us and identified below).

**Name and Address of Customer:**

Town of Davie  
6591 Orange Drive  
Davie, FL 33314  
Attn: Frank Apicella  
954-797-1049

**Agreement No:**

**Contract No:**

**IBM Services Assistant No:** G21023GQ

**Enterprise No:**

**Customer No:**

**Customer Billing Address:**

Town of Davie  
6591 Orange Drive  
Davie, FL 33314

**Charge Period :**

Start Date: 05/24/2000

End Date: 05/23/2005

Total Charges: \$63,734.29

**Charges and Payment Plan**

\$63,734.29 Contract Period prepayment

**The parties need not sign this schedule, unless either of us requests it.**

**Agreed to:** (Customer Company)

**Company Name:** Town of Davie

**Agreed to:** (IBM Company)

**International Business Machines Corporation**

**By :** \_\_\_\_\_  
Authorized signature

**By :** \_\_\_\_\_  
Authorized signature

**Name (type or print):**

**Name (type or print):**

**Date:**

**Date:**

## IBM Schedule for Services

---

### Enterprise Total for Charge Period by Customer Number

Customer No	Location	Charges
00000000		\$34,106.53
01147074		\$29,627.76
	Total :	<hr/> \$63,734.29



# IBM Schedule for Services

-----Eligible Machine-----				Maintenance Service						
Manufacturer Machine				Qty	Type of Repair #	##	Charges*	Charges Start**	Charges Stop**	
Type	Model	Serial								
Customer No / Location:			00000000							
IBM	3489	V1Z	000000000	1	B	1	\$52.30	W	01/28/2003	
IBM	6546	0AZ	000000000	1	G	1	\$154.28	W	01/28/2003	
Total :							\$206.58			
Customer No / Location:			01147074							
IBM	3570	C01	000058485	1	B	1	\$3,475.02	W	01/28/2003	
IBM	7208	342	0000P6610	1	B	1	\$3,115.18	W	01/28/2001	
IBM	7852	40Z	0042T5963	1	G	1	\$192.96	W	01/28/2001	
IBM	9406	720	00004MH6M	1	B	1	\$22,844.60	W	01/28/2001	
Total :							\$29,627.76			

## IBM Schedule for Services

---

Eligible Machine Description					Customer Technical Contact Name (if applicable)				
Type	Mod	Proc Feature	Serial	Support Service	Service Option/ Product Group	Qty	Charges*	Charge: Start**	Charges Stop**
Customer No / Location:									
9406	720	2062	4MH6M	AS400 ALERT SL SELECTED SYS SW SUPT-AS	ALERT FULL SHIFT AS GROUP E FOCAL MACHINE OS/400 I10-MQSERIES	1    1 1	\$1,417.57 \$32,482.38		
					<b>Total :</b>		<b>\$33,899.95</b>		

## **IBM Schedule for Services**

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### **Legends:**

#### **# Type of Repair Service**

- A) On-Site Repair Service, Monday through Friday (except holidays) 8am to 5pm
- B) On Site Repair 7 days a week, 24 hrs/day
- F) On-Site Exchange Service, Monday through Friday (except holidays) 8am to 5pm
- G) On-Site Exchange Service, 7 days a week, 24 hrs/day
- X) EasyServ (remotely delivered services)

#### **## Maintenance Services**

- 1) Maintenance of IBM Machines
- 2) Maintenance of non-IBM Machines
- 3) Warranty Services Upgrade
- 4) Warranty Service Support for SUN Microsystems Machines

\* Charges shown are for Charge Period.

-An (E) indicates a Machine that has been announced as withdrawn from generally Maintenance Service

-An (O) indicates One Time Charge

-An (W) indicates a Machine/Model/Feature under Warranty

\*\* Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates

\*\*\* These Programs are subject to the Service Program License Section of the referenced Statement of Work

## Additional Information

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<u>Type</u>	<u>Model</u>	<u>Serial</u>	<u>Features/RPQ</u>	<u>Effective From</u>	<u>Effective to</u>	<u>Quantity</u>
9406	720	00004MH6M		2001-01-28		1
			1502	2001-01-28		1
			2062	2001-01-28		1
			7128	2001-01-28		2
7852	40Z	0042T5963		2001-01-28		1
3570	C01	000058485		2003-01-28		1
7208	342	0000P6610		2001-01-28		1
3489	V1Z	000000000		2003-01-28		1
6546	0AZ	000000000		2003-01-28		1

<u>Offering</u>	<u>Ver</u>	<u>MQ</u>	<u>Comp</u>	<u>Effective From</u>	<u>Effective to</u>	<u>Service Condition</u>	<u>SC Value</u>	<u>Qty</u>
AS400-ALERT	001	ALERT	ALERT					1
SL SELECT-AS	002	OS/400	OS/400			COVERAGE	FULL SHIP	1
						SERVICE GROUP	AS GROUP E	
						FOCAL POINT	FOCAL MACHINE	
			110-MQSERIES					1

#### **Additional Information – General Comments**

# IBM Customer Agreement

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Thank you for doing business with us. We strive to provide you with high quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

This IBM Customer Agreement (called the "Agreement") covers business transactions you may do with us to purchase Machines, license Programs, and acquire Services.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement regarding these transactions, and replace any prior oral or written communications between us.

By signing below for our respective Enterprises, both of us agree to the terms of this Agreement. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services you order under this Agreement are subject to it.

Agreed to: (Town of Davie)

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number:

Agreement number:

Enterprise address:

IBM address:

<i>After signing, please return a copy of this Agreement to the "IBM address" shown above.</i>
--

# **IBM Customer Agreement**

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# IBM Customer Agreement

## Part 1 – General

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### 1.1 Definitions

**Customer-set-up Machine** is an IBM Machine that you install according to our instructions.

**Date of Installation** is the following:

1. for an IBM Machine we are responsible for installing, the business day after the day we install it or, if you defer installation, make it available to you for subsequent installation by us;
2. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. for a Program, the latest of –
  - a. the day after its testing period ends,
  - b. the second business day after the Program's standard transit allowance period,
  - c. the date, specified in a Transaction Document, on which we authorize you to make a copy of the Program, or
  - d. the date you distribute a copy of a chargeable component in support of your authorized use of the Program.

**Designated Machine** is either 1) the machine on which you will use a Program for processing and which we require you to identify to us by type/model and serial number, or 2) any machine on which you use the Program if we do not require you to provide this identification to us.

**Enterprise** is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the enterprise located in the United States or Puerto Rico.

**Machine** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that we may provide to you.

**Materials** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that we may deliver to you as part of a Service. The term "Materials" does not include Programs or Licensed Internal Code.

**Product** is a Machine or a Program.

**Program** is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes an IBM Program and any non-IBM Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

**Service** is performance of a task, provision of advice and counsel, assistance, or access to a resource (such as access to an information database) we make available to you.

**Specifications** is a document that provides information specific to a Product. For an IBM Machine, we call the document "Official Published Specifications." For an IBM Program, we call it "License d Program Specifications," or "License Information."



**Specified Operating Environment** is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications.

## **1.2 Agreement Structure**

### **Attachments**

Some Products and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments," which are also part of this Agreement. Attachments will be signed by both of us if requested by either of us.

### **Transaction Documents**

For each business transaction, we will provide you with the appropriate "Transaction Documents" that confirm the specific details of the transaction. Transaction Documents will be signed by both of us if requested by either of us. The following are examples of Transaction Documents with examples of the information they may contain:

1. addenda (contract-period duration, start date, and total quantity);
2. exhibits (eligible Products by category);
3. invoices (item, quantity, and amount due);
4. statements of work (scope of Services, responsibilities, deliverables, completion criteria, estimated schedule or contract period, and charges); and
5. supplements (Machine quantity and type ordered, price, estimated shipment date, and warranty period).

### **Conflicting Terms**

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

### **Our Acceptance of Your Order**

A Product or Service becomes subject to this Agreement when we accept your order by doing any of the following:

1. sending you a Transaction Document;
2. shipping the Machine or making the Program available to you; or
4. providing the Service.

### **Your Acceptance of Additional Terms**

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document;
2. using the Product or Service, or allowing others to do so; or
3. making any payment for the Product or Service.

## **1.3 Delivery**

We will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

## 1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges:

1. one-time (for example, the price of a Machine);
2. recurring (for example, a periodic charge for Programs or measured use of Services);
3. time and materials (for example, charges for hourly Services); or
4. fixed price (for example, a specific amount agreed to between us for a custom Service).

Depending on the particular Product, Service, or circumstance, additional charges may apply (such as special handling or travel related expenses). We will inform you in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as we specify which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Amounts are due upon receipt of invoice and payable as we specify in a Transaction Document. You agree to pay accordingly, including any late payment fee.

If any authority imposes a duty, tax, levy, or fee, excluding those based on our net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in the invoice or supply exemption documentation. You are responsible for personal property taxes for each Product from the date we ship it to you.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services, or connect time for network Services). You agree to provide actual usage data if we specify. If you make changes to your environment that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify us and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless we agree otherwise, we do not give credits or refunds for charges already due or paid. In the event that we change the basis of measurement, our terms for changing charges will apply.

We may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving you three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date we specify in the notice.

We may increase one-time charges without notice. However, an increase to one-time charges does not apply to you if 1) we receive your order before the announcement date of the increase and 2) one of the following occurs within three months after our receipt of your order:

1. we ship you the Machine or make the Program available to you;
2. you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine; or
3. a Program's increased use charge becomes due.

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Services for which you prepay must be used within the applicable contract period. Unless we specify otherwise, we do not give credits or refunds for unused prepaid Services.

## 1.5 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders and on-going transactions (such as licenses,

except that changes to license termination terms are effective only for new orders). Part 5 of this Agreement contains additional provisions for changes to the terms of individual Service transactions.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you (such as an order) are void.

## **1.6 IBM Business Partners**

We have signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When you order our Products or Services (marketed to you by IBM Business Partners) under this Agreement, we confirm that we are responsible for providing the Products or Services to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

## **1.7 Mutual Responsibilities**

Both of us agree that under this Agreement:

1. neither of us grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent;
2. all information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
3. each is free to enter into similar agreements with others;
4. each grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;
5. each may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;
6. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;
7. neither of us will bring a legal action more than two years after the cause of action arose; and
8. neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.

## **1.8 Your Other Responsibilities**

You agree:

1. not to assign, or otherwise transfer, this Agreement or your rights under this Agreement, delegate your obligations, or resell any Service, without our prior written consent. Any attempt to do so is void;
2. to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies
  - a. you are arranging lease-back financing for the Machines, or
  - b. you purchase them without any discount or allowance, and do not remarket them in competition with our authorized remarketers;
3. to allow us to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts we remove become our property. You represent that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to us;
4. that you are responsible for the results obtained from the use of the Products and Services;
5. to provide us with sufficient, free, and safe access to your facilities for us to fulfill our obligations; and
6. to comply with all applicable export and import laws and regulations.

## 1.9 Patents and Copyrights

For purposes of this Section, the term "Product" includes Materials (alone or in combination with Products we provide to you as a system) and Licensed Internal Code.

If a third party claims that a Product we provide to you infringes that party's patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you:

1. promptly notify us in writing of the claim; and
2. allow us to control, and cooperate with us in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will then give you a credit equal to:

1. for a Machine, your net book value provided you have followed generally-accepted accounting principles;
2. for a Program, the amount paid by you or 12 months' charges (whichever is less); and
3. for Materials, the amount you paid us for the Materials.

This is our entire obligation to you regarding any claim of infringement.

### Claims for Which We are Not Responsible

We have no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into a Product;
2. your modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other Products not provided by us as a system, or the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide; or
4. infringement by a non-IBM Product alone, as opposed to its combination with Products we provide to you as a system.

## 1.10 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), we are liable for no more than:

1. payments referred to in our patents and copyrights terms described above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials and Licensed Internal Code.

This limit also applies to any of our subcontractors and Program developers. It is the maximum for which we and our subcontractors and Program developers are collectively responsible.

**Items for Which We are Not Liable**

Under no circumstances are we, our subcontractors, or Program developers liable for any of the following:

1. third-party claims against you for damages (other than those under the first two items listed above);
2. loss of, or damage to, your records or data; or
3. special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if we are informed of their possibility.

**1.11 Agreement Termination**

You may terminate this Agreement on written notice to us following the expiration or termination of your obligations.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

**1.12 Geographic Scope**

All your rights, all our obligations, and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United States and Puerto Rico.

**1.13 Governing Law**

The laws of the State of New York govern this Agreement.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

# **IBM Customer Agreement**

## **Part 2 – Warranties**

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### **2.1 The IBM Warranties**

#### **Warranty for IBM Machines**

For each IBM Machine, we warrant that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, we provide repair and exchange Service for the Machine, without charge, under the type of Service we designate for the Machine.

If a Machine does not function as warranted during the warranty period and we are unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, you may return it to us and we will refund your money.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

#### **Warranty for IBM Programs**

For each warranted IBM Program, we warrant that when it is used in the Specified Operating Environment, it will conform to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available. During the warranty period, we provide defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability.

If a Program does not function as warranted during the first year after you obtain your license and we are unable to make it do so, you may return the Program to us and we will refund your money. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

#### **Warranty for IBM Services**

For each IBM Service, we warrant that we perform it:

1. using reasonable care and skill; and
2. according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

#### **Warranty for Systems**

Where we provide Products to you as a system, we warrant that they are compatible and will operate with one another. This warranty is in addition to our other applicable warranties.

### **2.2 Extent of Warranty**

If a Machine is subject to federal or state consumer warranty laws, our statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, removal or alteration of Product or parts identification labels, or failure caused by a product for which we are not responsible.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **2.3 Items Not Covered by Warranty**

We do not warrant uninterrupted or error-free operation of a Product or Service or that we will correct all defects.

We will identify IBM Products that we do not warrant.

Unless we specify otherwise, we provide Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

# **IBM Customer Agreement**

## **Part 3 – Machines**

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### **3.1 Title and Risk of Loss**

When we accept your order, we agree to sell you the Machine described in a Transaction Document. We transfer title to you or, if you choose, your lessor when we ship the Machine. However, we reserve a purchase money security interest in the Machine until we receive the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become our property, we reserve the security interest until we receive the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

We bear the risk of loss for the Machine up to and including its Date of Installation. Thereafter, you assume the risk.

### **3.2 Production Status**

Each IBM Machine is manufactured from new parts, or new and used parts. In some cases, a Machine may not be new and may have been previously installed. Regardless of a Machine's production status, our appropriate warranty terms apply.

### **3.3 Installation**

For the Machine to function properly, it must be installed in a suitable physical environment. You agree to provide an environment meeting the specified requirements for the Machine. We have standard installation procedures. We will successfully complete these procedures before we consider an IBM Machine (other than a Machine for which you defer installation or a Customer-set-up Machine) installed.

You are responsible for installing a Customer-set-up Machine (we provide instructions to enable you to do so) and a non-IBM Machine.

#### **Machine Features, Conversions, and Upgrades**

We sell features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to us. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become our property) to us. You further represent that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. You agree to allow us to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, we may terminate the transaction and you must return the feature, conversion, or upgrade to us at your expense.

### **3.4 Licensed Internal Code**

Certain Machines we specify (called "Specific Machines") use Licensed Internal Code (called "Code"). We own copyrights in Code or have the right to license Code. We or a third party own all copies of Code, including all copies made from them.

We will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial



number, for which the Code is provided. We license the Code to only one rightful processor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the Code (unless we make one available for your use), provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and
3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) destroy all your copies of the Code that were not provided by us, 2) either give the other party all your IBM-provided copies of the Code or destroy them, and 3) notify the other party of these terms. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

#### **Actions You May Not Take**

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;
2. reverse assemble, reverse compile, or otherwise translate the Code unless expressly permitted by applicable law without the possibility of contractual waiver;
3. sublicense or assign the license for the Code; or
4. lease the Code or any copy of it.

### **3.5 Machine Code**

For certain Machines we may provide basic input/output system code, utilities, diagnostics, device drivers, or microcode (collectively called "Machine Code"). This Machine Code is licensed under the terms of the agreement provided with it.

# Customer Agreement

## Part 4 – Programs

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### 4.1 License

When we accept your order, we grant you a nonexclusive, nontransferable license to use the Program. Programs are owned by International Business Machines Corporation or one of its subsidiaries ("IBM") or an IBM supplier and are copyrighted and licensed (not sold).

### 4.2 License Details

Under each license, we authorize you to:

1. use the Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, you may use another Machine temporarily. If the Designated Machine cannot assemble or compile the Program, you may assemble or compile the Program on another Machine.

If you change a Designated Machine previously identified to us, you agree to notify us of the change and its effective date;

2. use the Program to the extent of authorizations you have acquired;
3. make and install copies of the Program, to support the level of use authorized, provided you reproduce the copyright notices and any other legends of ownership on each copy or partial copy; and
4. use any portion of the Program we 1) provide in source form, or 2) mark restricted (for example, "Restricted Materials of IBM") only to -
  - a. resolve problems related to the use of the Program, and
  - b. modify the Program so that it will work together with other products.

You agree to comply with any additional terms we may place on a Program. We identify these in the Program's Specifications or in a Transaction Document.

#### Actions You May Not Take

You agree not to:

1. reverse assemble, reverse compile, or otherwise translate the Program; or
2. sublicense, rent, or lease the Program.

### 4.3 Program Components Not Used on the Designated Machine

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. You may make copies of a component and its documentation in support of your authorized use of the Program provided you notify us of the component's actual date of distribution.

### 4.4 Distributed System License Option

For some Programs, you may make a copy under a Distributed System License Option (called a "DSLO" copy). We charge less for a DSLO copy than we do for the original license (called the "Basic" license). In return for the lesser charge, you agree to do the following while licensed under a DSLO:

1. have a Basic license for the Program;
2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and

3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that we provide for the Basic license.

#### **4.5 Program Testing**

We provide a testing period for certain Programs to help you evaluate if they meet your needs. If we offer a testing period, it will start 1) the second business day after the Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. We will inform you of the duration of the Program's testing period.  
We do not provide testing periods for DSLO copies.

#### **4.6 Packaged Programs**

We provide certain Programs together with their own license agreements. These Programs are licensed under the terms of the agreements provided with them.

#### **4.7 Program Protection**

For each Program, you agree to:

1. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs; and
2. maintain a record of all copies and provide it to us at our request.

#### **4.8 Program Services**

We provide Program Services for warranted Programs and for selected other Programs. If we can reproduce your reported problem in the Specified Operating Environment, we will issue defect correction information, a restriction, or a bypass. We provide Program Services for only the unmodified portion of a current release of a Program.

We provide Program Services 1) on an on-going basis (with at least six months' written notice before we terminate Program Services), 2) until the date we specify, or 3) for a period we specify.

#### **4.9 License Termination**

You may terminate the license for a Program on one month's written notice, or at any time during the Program's testing period.

Licenses for certain replacement Programs may be acquired for an upgrade charge. When you acquire these replacement Programs, you agree to terminate the license of the replaced Programs when charges become due, unless we specify otherwise.

We may terminate your license if you fail to comply with its terms. If we do so, your authorization to use the Program is also terminated.

# **IBM Customer Agreement**

## **Part 5 - Services**

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### **5.1 IBM Services**

Services may be either standard offerings or customized to your specific requirements. Each Service transaction may include one or more Services that:

1. expire at task completion or an agreed upon date;
2. automatically renew as another transaction with a specified contract period. Renewals will continue until either of us terminates the Service; or
3. do not expire and are available for your use until either of us terminates the Service.

### **5.2 Personnel**

Each of us is responsible for the supervision, direction, and control of our respective personnel.

We reserve the right to determine the assignment of our personnel.

We may subcontract a Service, or any part of it, to subcontractors selected by us.

### **5.3 Materials Ownership and License**

We will specify Materials to be delivered to you. We will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which you will have all right, title, and interest (including ownership of copyright). We will retain one copy of the Materials. You grant us 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which we or third parties have all right, title, and interest (including ownership of copyright). We will deliver one copy of the specified Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Section.

Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either of us, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

### **5.4 Changes to Service Terms**

We may change the terms of Services that are renewable or non-expiring by giving you three months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date we specify in the notice to all existing transactions. If we make a change to the terms of a renewable Service that 1) affects your current contract period and 2) you consider unfavorable, on your request, we will defer it until the end of that contract period.

When both of us agree to change any Services statement of work other than as described above, we will prepare a written description of the agreed change (called a "Change Authorization"), which both of us must sign. The terms of a Change Authorization prevail over those of the statement of work and any of its previous Change Authorizations.

## **5.5 Renewal**

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

## **5.6 Termination and Withdrawal**

Either of us may terminate a Service if the other does not meet its obligations concerning the Service.

You may terminate a non-expiring Service, without adjustment charge, on one month's written notice to us provided you have met all minimum requirements specified in the applicable Attachments and Transaction Documents.

You may terminate a renewable Service or a non-expiring maintenance Service, without adjustment charge, on notice to us provided you have met all minimum requirements specified in the applicable Attachments and Transaction Documents and any of the following circumstances occur:

1. you permanently remove the eligible Product, for which the Service is provided, from productive use within your Enterprise;
2. the eligible location, for which the Service is provided, is no longer controlled by you (for example, because of sale or closing of the facility);
3. an increase in the Service charges, either alone or in combination with prior increase over the previous twelve months, is more than the maximum specified in the applicable Service Transaction Document. If no maximum is specified, then this circumstance does not apply; or
4. the Machine has been under maintenance Services for at least six months and you give us one month's written notice prior to terminating the maintenance Service.

For all other circumstances, you may terminate an expiring or renewable Service on one month's written notice to us but such termination will result in adjustment charges equal to the lesser of:

1. the charges remaining to complete the contract period; or
2. one of the following if specified in the Transaction Document --
  - a. the charges remaining to complete the contract period multiplied by the adjustment factor specified, or
  - b. the amount specified.

You agree to pay us for all Services we provide and any Products and Materials we deliver through Service termination and any charges we incur in terminating subcontracts.

We may withdraw a renewable or non-expiring Service or support for an eligible Product on three months' written notice to you. If we withdraw a Service for which you have prepaid and we have not yet fully provided it to you, we will give you a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

## **5.7 Service for Machines (during and after warranty)**

We provide certain types of repair and exchange Service either at your location or at a service center to keep Machines in, or restore them to, conformance with their Specifications. We will inform you of the available types of Service for a Machine. We may repair the failing Machine or exchange it at our discretion.

When the type of Service requires that you deliver the failing Machine to us, you agree to ship it suitably packaged (prepaid unless we specify otherwise) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense unless we specify otherwise. We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit in those cases where we are responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner to have us service a Machine that you do not own; and
2. where applicable, before we provide Service -
  - a. follow the problem determination, problem analysis, and service request procedures that we provide,
  - b. secure all programs, data, and funds contained in a Machine, and
  - c. inform us of changes in a Machine's location.

When Service involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before we exchange a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Any feature, conversion, or upgrade we service must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which we are not responsible; or
5. service of Machine alterations.

We manage and install engineering changes that apply to IBM Machines and may also perform preventive maintenance.

We provide maintenance Services for selected non-IBM Machines.

## **5.8 Maintenance Coverage**

When you order Machine maintenance Services under this Agreement, we will inform you of the date on which the maintenance Services will begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service you may have us restore it for a charge. Alternatively, you may withdraw your request for maintenance Services. However, you will be charged for any maintenance Services which we have performed at your request.

MAY 22 '00 14:23 FR CSD IBM ATLANTA 2-8 404 238 1826 TO 912102531043

P.02/02

TR

EMO Rollover CREDIT Quotes

Enter information below, then press Enter.

Original Type Serial..... 9406 / 43431  
Original EMO Start Date... 05 / 05 / 1996  
Original EMO End Date..... 05 / 08 / 2001  
Rollover Install Date..... 01 / 26 / 2000  
Original EMO Charge..... \$ 18083.73\_  
Warranty period (months).. 0\_\_\_\_\_

Total Rollover Credit..... 4631.44

Press Print Screen To Print

F1=HELP F2=REFRESH F3=QUIT F4=Save Data

Tq